

THE STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S FINAL APPROVED TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona

October 30, 2006

12:00 p.m.

Reported By:

Lilia Monarrez, CR 50699

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1 A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN
 2 ELECTIONS COMMISSION, convened at 12:00 p.m. on October
 3 30, 2006, at the State of Arizona, Clean Elections
 4 Commission, 1616 W. Adams, Conference Room, Phoenix,
 5 Arizona, in the presence of the following Board members:
 6 Ms. Marcia Busching, Phoenix, Chairperson
 7 Mr. Gary Scaramazzo, Page (teleconference)
 8 Ms. Ermila Jolley, Yuma
 9 Mr. Carl Kunasek, Maricopa
 10 Ms. Royann J. Parker, Pima (teleconference)
 11 OTHERS PRESENT:
 12 Todd Lang, Executive Director
 13 Diana Varela, Assistant Attorney General
 14 Colleen McGee, Deputy director
 15 Paula Ortiz, Executive Assistant
 16 Michael Becker, Voter Education Manager
 17 Daniel Ruiz II, Campaign Finance Manager
 18 Eric Peterson, Administrative Counsel
 19 Kelly Flood, Shughart Thomson & Kilroy
 20 Tom Irvine, Shughart Thomson & Kilroy
 21 Kathleen Hale, Haralson Miller Pitt
 22 Jose de Jesus Rivera, Haralson Miller Pitt
 23 Christian Palmer, Arizona Capitol Times
 24 Lee Munsil, Munsil Campaign
 25 Doug Drury, Len Munsil for Governor
 Lauren Lowe, AZ Democratic Party
 Michael Brewer, Citizen
 Eric Ehst, Clean elections Institute
 Lee Miller, Miller LaSota & Peters
 Andy Gordon, Attorney for Napolitano
 Howie Fischer, reporter
 Paul Davenport, reporter
 Bill Coates, Reporter

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PROCEEDING

1 CHAIRPERSON BUSCHING: This is a meeting of
 2 the Citizens Clean Elections Commission at 1616 West
 3 Adams, Suite 110, Phoenix, Arizona 85007. Today is
 4 Monday, October 30th, 2006.

5 My name is Marcia Busching. I'm chairman
 6 of the Commission. Commissioners Jolley and Kunasek
 7 are in person and Scaramazzo and Parker are appearing
 8 by telephone. This meeting was scheduled for 10:30,
 9 but it was to be held upon the adjournment of the prior
 10 meeting and we have just adjourned the prior meeting.
 11 It's 12:00 p.m.

12 The Commission may vote to go into
 13 executive session, which will not be open to the
 14 public, for any item listed on the agenda, for
 15 obtaining legal advice.

16 All matters on the agenda may be discussed
 17 and considered and are subject to action by the
 18 Commission.

19 The first item called to order, I've
 20 already done. The second item I understand is also
 21 already done.

22 If you would confirm that, Mr. Lang.

23 MR. LANG: That's correct, Madame Chair.

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1 The report was given by the committee and it was an
 2 exact amount, and there's no dispute as to whether it
 3 was express advocacy or whether it was a slate. So we
 4 already issued those matching funds.

5 CHAIRPERSON BUSCHING: Okay. Item 3,
 6 consideration and possible action regarding issuance of
 7 matching funds for Proposition 107 mailer.

8 Mr. Lang.

9 MR. LANG: Thank you, Madame Chair,
 10 Commissioners.

11 This is actually part of -- I'm asking you
 12 to consider just the matching funds portion of the
 13 complaint that was filed by the Munsil campaign
 14 regarding an ad -- a web ad that criticized Munsil.
 15 The complaint regards the issue of coordination, and I
 16 address it in the lecture here because, of course --
 17 well, I'll go through it and then I'll explain my
 18 reasoning.

19 If you go to www.noprop107.com, there's a
 20 link to an advertisement that criticizes the -- that
 21 criticizes Len Munsil -- I don't think we thought to
 22 put it down here. I should have, but I didn't.
 23 There's no express advocacy issue here, really, but
 24 next time I'll have one for you.

25 Anyway, the advertisement, as you can see

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1 in my report, is very critical of Mr. Munsil. On
 2 page 2 you'll see I discuss that. It doesn't have
 3 magic words, but it does refer to Mr. Munsil by name.
 4 It criticizes him as someone who helped write
 5 Proposition 107, and remember this was sent to folks
 6 who are opposed to 107.

7 And then you see the language, click here
 8 to watch the video of someone who wants to take the way
 9 of the rights of thousands of Arizona residents. Well,
 10 I think no matter which party you're in, that's
 11 negative any time you want -- someone wants to take
 12 away your rights. So when you look at the criteria
 13 under 16-901.01, it casts the candidate in a negative
 14 light. It's mailed to the electorate and it's right
 15 before the election, and so there I think it's express
 16 advocacy and should be matched.

17 You have in front of you the complaint.
 18 You also have a letter from Lisa Houser, who is counsel
 19 to the Prop 107 folks, and in it she says that the
 20 value of the video was \$212. So I'm only asking for
 21 matching funds of \$212. This brings us to the sort of
 22 interesting issue in this particular matter. There's
 23 an accusation in the complaint that there was
 24 coordination and, in fact, in a technical sense, I
 25 believe there was.

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1 When you look at the definition -- first of
 2 all, independent expenditures cannot be made in
 3 coordination with candidates. By definition they're
 4 not independent if they're made in coordination with
 5 the independent -- with candidates. And so in order to
 6 qualify, it has to meet those definitions and you
 7 cannot have an agent of a candidate also be an agent of
 8 the -- of the group that's doing the independent
 9 expenditure, in this case, the No on prop 107 folks.

10 And then you look through the definition of
 11 agent in 16-901.01, the first one there, and the key is
 12 an agent includes all these different folks who have
 13 authority -- blah, blah, blah, blah, blah. And then
 14 you get to the end, and it says or a political
 15 consultant for a candidate or a political committee.
 16 That is very broad, and I don't think either party is
 17 willing to consider that when this election cycle
 18 began.

19 And in this case, Mr. Phobes, who was a
 20 consultant for Napolitano -- remember, we worked with
 21 him extensively on the web issue that we began with at
 22 the beginning of this election cycle. He's clearly a
 23 consultant with the Napolitano folks. He did their web
 24 work, but he's also a consultant to the No on 107 folks
 25 in this regard and he helped them, but we -- you

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1 don't -- what you don't have before you, which is in
 2 the complaint filed but not on this file, is an
 3 affidavit from the Napolitano campaign.

4 I think it was from Andy Gordon. The
 5 letter was from Andy Gordon, and the Napolitano folks
 6 are saying that there's no coordination; that what
 7 Phobes did for the Napolitano folks had nothing to do
 8 with what he did for the No on 107 folks; that he had
 9 no -- he shared no knowledge and in fact what he did
 10 was completely separate. And I believe that. I think
 11 consultants do that quite often, you know. Frankly,
 12 consultants work for lots of campaigns and we have a
 13 problem if we're going to construe this strictly.

14 And so I sort of did a predetermination.
 15 Obviously, it's up to the Commission, but I am not
 16 going to do a reason to believe that on Thursday. I'm
 17 not going to recommend a violation by the Napolitano
 18 folks but that's for you to decide on Thursday, but I
 19 think in fairness to the Munsil folks, if I'm not going
 20 to recommend that there's -- that there's coordination,
 21 then I should at least bring to the Commission the
 22 matching funds issue because if there is coordination,
 23 if there was a violation by the Napolitano folks, that
 24 results in enforcement but, most importantly, it
 25 results in no matching funds.

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1 And so it strikes me as unfair to say I'm
 2 not going to do an enforcement but then not give
 3 matching funds, and so I'm recommending the \$212 in
 4 matching funds today because I think it's a fair result
 5 and I don't think there was coordination and I think
 6 this was express advocacy against Mr. Munsil.

7 CHAIRPERSON BUSCHING: Thank you.

8 Are there questions of Mr. Lang?

9 If not, I'll turn to the public and see if
 10 there's anyone that wishes to speak to this matter.

11 Sir, come forward and state your name,
 12 please. Comments will be limited to five minutes.

13 MR. DRURY: Thank you.

14 Douglas Drury on behalf of the Lynn Munsil
 15 for Governor Campaign. My understanding is that we're
 16 just talking about the matching funds issues today, so
 17 I'm limiting my comments to that.

18 My only comment on that is that Mr. Lang's
 19 recommendation limits it to the apparent cost of
 20 preparing the web ad, but this ad was also emailed out
 21 to -- I don't know the number, but to numerous people.
 22 We had numerous reports that it was emailed out
 23 apparently from a Matchco list which also has value.
 24 Mailing lists have values sometimes; sometimes
 25 substantial value.

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1 And I would think the matching fund -- in
 2 the matching amount, you should consider that part of
 3 the issue as well, not just the -- not just the cost of
 4 preparation of the ad. It's what the whole thing was
 5 as opposed to just putting it on the -- because it
 6 wasn't just put on the web site. It was emailed to,
 7 again, we believe thousands of people.

8 CHAIRPERSON BUSCHING: Okay.

9 MR. DRURY: Thank you.

10 CHAIRPERSON BUSCHING: Thank you.

11 Other questions of Mr. Drury?

12 If not, thank you.

13 Anyone else from the public wish to speak
 14 to this matter? If not, we'll turn to the Commission.

15 Any discussion or a motion -- or questions?

16 THE REPORTER: I'm sorry.

17 CHAIRPERSON BUSCHING: Commissioner Parker,
 18 we couldn't hear you.

19 COMMISSIONER PARKER: Madam Chairman, I
 20 move we provide \$212 in matching funds to the Munsil
 21 campaign.

22 MR. KUNASEK: Second.

23 CHAIRPERSON BUSCHING: It's been moved by
 24 Commissioner Parker and seconded by commissioner
 25 Kunasek that we approve \$212 in matching funds to the

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1 Munsil campaign.
 2 Any further discussion? If not, the Chair
 3 will call for the question.
 4 All in favor say, "aye."
 5 (Chorus of ayes.)
 6 CHAIRPERSON BUSCHING: Opposed, nay?
 7 The Chair votes aye. Motion carries.
 8 Next item, Item 4, discussion and possible
 9 action on the following enforcement matters: A,
 10 Terry -- MUR 06-0028, Terry Goddard, reason to believe.
 11 Mr. Lang?
 12 MR. LANG: Madame Chair, Commissioners, I
 13 would point out that Kathleen Hale and Jose Rivera are
 14 here to provide legal advice on both of these matters as you
 15 desire it, and I did run the recommendations by them
 16 and got -- sought their input and advice.
 17 This is -- which one are we doing first?
 18 Terry Goddard, okay. This is a complaint filed by
 19 Michael Bailey, who is an attorney who works with the
 20 Munsil folks sometimes -- actually, he works with the
 21 Montgomery folks -- who filed a complaint alleging a
 22 similar issue as to what we've already considered in
 23 the Torres matter and in the Montgomery matter. That
 24 is the improper use of primary funds for purposes
 25 directed to the general election.

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1 of, but on August 15, J&R -- the Goddard campaign
 2 ordered 500 signs from J&R Graphics, and those were
 3 paid for on September 5th. And then on August 28,
 4 there were more -- 500 more signs that were ordered,
 5 and those were also paid for on September 5th.
 6 And then an additional expenditure occurred
 7 on September 1st and then again on September 5th for
 8 another 500 signs. So we have a lot of expenditures
 9 right before the primary, but the affidavits that we
 10 received indicate that the vast majority of these signs
 11 weren't distributed amongst volunteers and put out
 12 before the public before the primary.
 13 Now, granted they're going to be much more
 14 useful in the general because we're talking about a few
 15 days, but under our guidelines, so long as you get them
 16 out in the primary and use them in the primary, you are
 17 permitted to use them in the general. And so while the
 18 Torres and Montgomery complaints were significant
 19 enough that I felt we had to look into it further --
 20 and I'm not saying those were violations, but we did
 21 need to look into it further -- this one I don't
 22 recommend that we look into it further because of the
 23 affidavit and because of the indication that the vast
 24 majority of signs did go out.
 25 Now, it does appear that about 150 signs

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1 You have in front of you a complaint. You
 2 have a response and you have affidavits indicating --
 3 affidavits from the campaign manager, Ruben Alonzo, and
 4 an affidavit from Robert Larose, who is the campaign
 5 treasurer, regarding how the various expenditures took
 6 place and the timing of those expenditures, and what we
 7 have here is a number of expenditures that did occur in
 8 August.
 9 And so they did raise the concern, but the
 10 affidavits were quite helpful and the response was
 11 quite helpful to assuage many of my concerns. You can
 12 see they're each broken down in the report: the
 13 polling, the signs and the later expenditures. In
 14 fact, the polling is quite straightforward. It
 15 occurred in mid-August -- the polling did -- and then
 16 it was paid for on August 29th, and they actually used
 17 it for a mailing that went out before the primary. So
 18 the polling was actually used to inform the mailing
 19 that went out before the primary.
 20 So that one is certainly -- a radio ad.
 21 Thank you. Eric corrects me. It was a radio ad. So
 22 that one I'm quite comfortable in finding that there
 23 was no improper use of general -- or primary funds for
 24 the general election. The signs are a little more
 25 difficult because there's a lot of signs to keep track

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1 did not go out, but we're talking about over a thousand
 2 signs. And so I'm comfortable recommending that we
 3 find no reason to believe because the vast majority did
 4 go out before the primary.
 5 CHAIRPERSON BUSCHING: Okay. Thank you.
 6 Are there questions of Mr. Lang?
 7 Is there anyone from the public that wishes
 8 to speak to this matter? If not, the Chair will
 9 entertain discussion or a motion.
 10 COMMISSIONER SCARAMAZZO: In MUR-06-0028, I
 11 find -- I would move that we find no reason to believe
 12 a violation occurred.
 13 CHAIRPERSON BUSCHING: Is there a second?
 14 COMMISSIONER JOLLEY: I second.
 15 CHAIRPERSON BUSCHING: It's been moved by
 16 Commissioner Scaramazzo and seconded by Commissioner
 17 Jolley that the Commission find no reason to believe in
 18 MUR 06-0028.
 19 Further discussion? If not, the Chair will
 20 call for the question.
 21 All in favor say, "aye."
 22 (Chorus of ayes.)
 23 CHAIRPERSON BUSCHING: Opposed, nay? The
 24 Chair votes aye. Motion carries.
 25 The next item, Item IV B, MUR 06-0019, Bill

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1 Montgomery, possible settlement agreement.
 2 Mr. Lang?
 3 MR. LANG: Thank you, Madame Chair.
 4 Commissioners, Erick Peterson and I have
 5 been working with the Montgomery campaign trying to do
 6 further investigation to confirm a number of issues we
 7 were looking into. And they were quite cooperative and
 8 provided all the information we needed, but ultimately
 9 we agreed to a proposed settlement that you now have
 10 before you. As you recall, this was a complaint, also,
 11 about spending primary money during the general.
 12 This regarded -- this was in regard to a TV
 13 commercial that was filmed in a park and that was
 14 not -- and it was filmed, I think, on the day of the
 15 primary and so there was really no reasonable
 16 expectation that it could have been used during the
 17 primary. And, in fact, the Montgomery folks
 18 acknowledged that it wasn't used during the primary.
 19 What they did point out was that they tried to get it
 20 filmed sooner and they planned to use it during the
 21 primary and they gave us information regarding that.
 22 And it was due to a number of
 23 circumstances, including one of their staff people
 24 leaving town, that they were unable to get that done.
 25 So the circumstances -- the commercial was filmed later

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1 issues with this regarding our briefs and our proof
 2 requirements and going from a reason to believe to a
 3 finding good cause, and they waived the rights under
 4 the law and agreed to the settlement so that they can
 5 resolve this quickly.
 6 So with that, I'm happy to answer your
 7 questions, but I think this is a fair resolve.
 8 CHAIRPERSON BUSCHING: Okay. Are there
 9 questions of Mr. Lang?
 10 COMMISSIONER KUNASEK: Since my book is not
 11 completely coordinated, I guess.
 12 CHAIRPERSON BUSCHING: The only thing that
 13 is is that.
 14 COMMISSIONER KUNASEK: Yeah, and so this
 15 pertains to the 028 or to this one? What does this
 16 pertain to, I guess?
 17 MR. LANG: I'm sorry, Commissioner Kunasek.
 18 We should have had the original reasons to believe in
 19 there for you for your information, but this
 20 contains -- this is regarding the agenda item IV B, MUR
 21 06-0019, Bill Montgomery, and this is -- and we found a
 22 reason to believe that there was a violation. You
 23 asked me to look into it.
 24 COMMISSIONER KUNASEK: Okay.
 25 MR. LANG: And in the meantime, we got some

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1 than they anticipated, but ultimately they did pay
 2 during the primary for TV time to their LLC, to
 3 their -- to the consultant some \$43,000 and clearly
 4 that wasn't going to be used during the primary.
 5 So what we have before you is a settlement
 6 in which there's no penalty in terms of a fine, but
 7 that they -- the Montgomery folks agreed to give back
 8 the 43,000 that was directed for -- during -- that was
 9 directed from primary funds to pay for ad time on TV
 10 during the general. That was clearly a violation, and
 11 they agreed to return that money to us, which \$43,000
 12 is a significant amount of money. I think that's quite
 13 a significant penalty.
 14 We certainly could have asked for all of
 15 it, but I think given the cooperation, given their good
 16 faith belief that they were acting in accordance with
 17 the law, although they acknowledge now agree with that
 18 law, and given the fact that they did undergo difficult
 19 circumstances in getting the shoot done and that they
 20 fully cooperated throughout, I recommend that the
 21 Commission accept this settlement that they immediately
 22 repay the \$43,000 and that this matter be closed.
 23 I should also note that in the settlement
 24 agreement at paragraph 7, you see that they waived
 25 their rights because I think it results in timing

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1 confirmation on some facts we needed and we ended up
 2 recommending this settlement.
 3 COMMISSIONER KUNASEK: Thank you.
 4 CHAIRPERSON BUSCHING: Commissioner Jolley?
 5 COMMISSIONER JOLLEY: Yes. I have a
 6 question for Todd.
 7 Todd, so when -- I notice that there isn't
 8 a date as to when this payment would be made. I know
 9 there's no revised -- the last report is November the
 10 3rd, but is there a time frame? Thirty days?
 11 MR. LANG: Well, as I understand this,
 12 Madame Chair, Commissioner Jolley, if you look at the
 13 first paragraph 1, as I read it and as I understand it,
 14 he's required to repay it by November 3rd.
 15 COMMISSIONER JOLLEY: Okay. Okay. Very
 16 good.
 17 CHAIRPERSON BUSCHING: Okay. Other
 18 questions of Mr. Lang?
 19 Is there anyone from the public that wishes
 20 to speak to this matter? Ma'am.
 21 MS. FLOOD: Good afternoon. I'm Kelly
 22 Flood from the law firm of Shughart, Thomson & Kilroy.
 23 You'll recall that Mr. Harbor of our firm is the one
 24 who filed the initial complaint against Mr. Montgomery.
 25 We just had a few comments about the proposed

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1 conciliation because it raises some concerns from our
2 perspective for a precedent it may set and also what
3 client candidates -- how client candidates are
4 disadvantaged and what candidates who intend to comply
5 in the future should do in the future.

6 Although we recognize that the \$43,000
7 return is significant -- I believe it would be one of
8 the largest, although you said it wasn't really a
9 penalty. It would be one of the largest returns as it
10 were in the history of enforcement of the clean
11 elections regulations. There still seem to be some
12 things that are missing from the proposed conciliation
13 agreement that create some concerns and some dangerous
14 precedents.

15 I believe, Mr. Lang, you indicated this
16 morning that you received evidence from
17 Mr. Montgomery's group that they originally intended to
18 try to film the ad earlier to be able to use it during
19 the primary, but in fact, the ad was filmed on
20 September 12, the day of the primary, and it could not
21 possibly have been used in the primary. So to have
22 perhaps at one time have had the intent of filming the
23 ad and directing it to the primary, that could not, in
24 fact, have happened when he filmed the ad on
25 September 12.

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1 that seems to violate the spirit of the clean elections
2 regulations and, yeah, it seems to be a logical result
3 of this particular conciliation agreement to the effect
4 that this would create any sort of precedent.

5 So what our concerns are is we still don't
6 seem to have enough information about what
7 Mr. Montgomery is permitted or not permitted to do with
8 the ad that he filmed on September 12. That ad
9 clearly, if it was filmed on that date, could never
10 have been intended to be used during the primary. And
11 by a return of only the \$43,000 Mr. Montgomery isn't
12 even put in a position that he would have been in had
13 he complied with the regulations.

14 So it seems to be not a real penalty with
15 real effects, and it doesn't seem to put the real teeth
16 into the regulations that we think should be there.
17 Again, we recognize \$43,000 is a very significant
18 penalty, but it doesn't seem to -- Mr. Montgomery's
19 actions certainly don't seem in keeping with the spirit
20 of clean elections regulations and the result of the
21 conciliation agreement would seem to invite violations
22 in the future, and that -- that causes great concern.

23 CHAIRPERSON BUSCHING: Thank you.

24 Are there questions of Ms. Flood? If not,
25 I heard a beep.

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1 Another concern is we -- the conciliation
2 agreement doesn't seem to address whether or not
3 Mr. Montgomery and his campaign can use the ad filmed
4 on the 12th during the general. I don't know if he has
5 used it or if he intends to it, but that's another
6 question. It seems to have been ill-gotten.

7 Again, if he's allowed to use it during the
8 general -- and, again, I don't see it addressed here
9 and perhaps Mr. Lang or the Commission knows something
10 that just simply isn't stated expressly in the
11 agreement. We have concerns about that.

12 Also, the settlement seems to encourage the
13 type of gamesmanship that Mr. Montgomery sat before the
14 Commission at the last hearing and said should not
15 happen because, according to what has happened here, a
16 candidate in the next election could film an ad the
17 last day of the primary, show it on cable access once
18 before the primary and then on the day -- the first day
19 after the primary when he has his general money could
20 buy a lot of air time for the general and then film --
21 and then air that ad during the general.

22 And that would seem to show that the actual
23 intent was to use it during the general, not during the
24 primary, but if you can show it once right before the
25 primary ends, then you sort of get away with it. And

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1 Do we still have Commissioner Scaramazzo
2 and Commissioner Parker?

3 COMMISSIONER SCARAMAZZO: Yes.

4 COMMISSIONER PARKER: Yes.

5 CHAIRPERSON BUSCHING: Okay. Good.

6 Anyone else from the public wish to speak?

7 If not, Mr. Lang, do you want a summary --
8 to summarize, please?

9 MR. LANG: Thank you, Madame Chair,
10 Commissioners.

11 I suppose what I want to do is respond to
12 Ms. Flood. She raises a number of concerns about what
13 sort of precedent this sets and, frankly, I think
14 giving up \$43,000 out of a very limited public
15 allocation is a fairly strenuous precedent. I think
16 folks will try mildly to avoid that sort of result. I
17 do agree, though, that we could have asked for all the
18 money back, but I think given the fact that there are a
19 number of close calls regarding the primary and the
20 general and given the sort of situation we had here, I
21 think it's an appropriate result.

22 That said, I don't disagree with Ms. Flood
23 that this clearly would have been bad management and by
24 the time he filmed it, it had to be for the general.
25 That's why this sort of penalty is appropriate. As for

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1 gamesmanship, I think that we can promote rules and
2 guidance on what exactly constitutes significant use in
3 the primary so that we have guidelines out there, and
4 that's something that we can do for the Commission if
5 they'd like us to in terms of rules.

6 As to whether he can use the film in
7 general, the only penalty here is the \$43,000 return.
8 That is the penalty we are recommending, and we think
9 that's quite significant. Whatever he filmed or
10 whatever he did, he can use so long as he abides by
11 Commission rules, but in terms of the violation alleged
12 for using primary monies in this fashion for general
13 election purposes, this is the only penalty, the
14 43,000. So whatever he filmed, that can be used, but
15 we still think this is a very significant penalty.

16 CHAIRPERSON BUSCHING: Okay.

17 COMMISSIONER KUNASEK: Madame Chair, if you
18 wanted the 30,000 -- I guess my question is if you
19 make -- if you produce an advertising piece, whether it
20 be TV or radio, and it's used in the primary, are you
21 prohibited from using that in the general, then,
22 because it wasn't -- it wasn't out of general election
23 awards?

24 MR. LANG: Madame Chair, Commissioners and
25 Commissioner Kunasek, no. If you pay for something

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1 with primary funds and use it in the primary, you are
2 permitted under Commission practice to use it in the
3 general. The perfect example of this is signs. That's
4 the one that often comes up, and so this is -- this is
5 a much tougher case. And I think some of Ms. Flood's
6 concerns are well taken and we'll address those in the
7 rules, but I think ultimately this is a significant
8 penalty.

9 And, you know, we've had other candidates
10 who came close to the line like, for instance, the case
11 I just brought before you where they got all those
12 signs out right before the primary and we know they're
13 going to be used more in the general. So there is a
14 line that needs to be drawn and clarified for folks and
15 we'll do that through rules, but I think this is a
16 fair -- this settlement is a fair resolve.

17 COMMISSIONER KUNASEK: So then in this
18 case, if he does use the production effort or the item
19 produced and he does use it in the general, he can then
20 make an entry on his expenditures of the general for
21 the cost of the purchase of the air time.

22 MR. LANG: That's correct.

23 COMMISSIONER KUNASEK: Okay.

24 CHAIRPERSON BUSCHING: Are there other
25 questions of Mr. Lang or discussion?

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1 MR. LANG: I would -- if I could follow up
2 on Commissioner Kunasek's point, that's actually
3 required. He has to use general election money for the
4 purchase of ad time, yeah.

5 CHAIRPERSON BUSCHING: Okay. Is there a
6 motion?

7 COMMISSIONER KUNASEK: Madame Chair, I
8 would make a motion to approve the settlement -- I
9 guess it's called conciliation agreement -- in this
10 case of 06-0019.

11 COMMISSIONER SCARAMAZZO: Second.

12 CHAIRPERSON BUSCHING: It's been moved by
13 Commissioner Kunasek and seconded by Commissioner
14 Scaramazzo that we approve the conciliation agreement
15 proposed by staff in the matter of Bill Montgomery, MUR
16 06-0019.

17 All in favor say, "aye."

18 (Chorus of ayes.)

19 CHAIRPERSON BUSCHING: Opposed, nay?

20 The Chair votes aye. Motion carries.

21 Item V, call for public comment. This is
22 the time for consideration and discussion of comments
23 and complaints from the public. Action taken as a
24 result of public comment will be limited to directing
25 staff to study the matter or rescheduling the matter

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1 for further consideration and decision at a later date
2 or responding to criticism.

3 Is there anyone from the public that wishes
4 to speak?

5 If not, Item VI, is there a motion for
6 adjournment?

7 COMMISSIONER KUNASEK: So moved.

8 COMMISSIONER JOLLEY: Second.

9 CHAIRPERSON BUSCHING: It's been seconded
10 -- it's been moved by Commissioner Kunasek and seconded
11 by Commissioner Jolley that we adjourn.

12 All in favor say, "aye."

13 (Chorus of ayes.)

14 CHAIRPERSON BUSCHING: Opposed, nay?

15 Chair votes aye. Motion carries.

16 This meeting is adjourned.

17 (The proceedings concluded at 12:30 p.m.)

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1 REPORTER'S CERTIFICATE

2
3 I, LILIA MONARREZ, CR No.50699, Certified
4 Reporter, certify;

5 That the foregoing proceedings were taken
6 before me at the time and place therein set forth;

7 That the proceedings were recorded
8 stenographically by me and were thereafter transcribed;

9 That the foregoing is a true and correct
10 transcript of my shorthand notes so taken.

11 I further certify that I am not a relative
12 or employee of any attorney of the parties, nor
13 financially interested in the action.

14 I declare under penalty of perjury under
15 the laws of the State of Arizona that the foregoing is
16 true and correct.

17 Dated this 1st day of November, 2006.

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19 _____
20 LILIA MONARREZ, CR No. 50699
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